

STATE OF MINNESOTA

OFFICE OF ADMINISTRATIVE HEARINGS

Gail Fitzgerald,

Complainant,

vs.

**DISMISSAL ORDER**

Scott Schulte,

Respondent.

On July 19, 2012, Gail Fitzgerald filed a Campaign Complaint with the Office of Administrative Hearings alleging that Scott Schulte violated Minn. Stat. § 211B.13 (bribery/treating).

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on July 19, 2012. A copy of the Complaint was sent by U.S. mail to the Respondent on July 20, 2012.

After reviewing the Complaint and attached exhibits, the undersigned Administrative Law Judge has determined that the Complaint does not set forth a *prima facie* violation of Minn. Stat. § 211B.13. This determination is described in more detail in the attached Memorandum.

Based upon the Complaint and the supporting filings and for the reasons set out in the attached Memorandum,

**IT IS ORDERED:**

That the Complaint filed by Gail Fitzgerald is DISMISSED.

Dated: July 23, 2012

s/Barbara L. Neilson

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BARBARA L. NEILSON

Administrative Law Judge

**NOTICE**

Under Minn. Stat. § 211B.36, subd. 5, this Order is the final decision in this matter and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

## MEMORANDUM

The Respondent, Scott Schulte, is a candidate for the Anoka County Board of Commissioners, District 7. The Complaint alleges that on July 14, 2012, Mr. Schulte and/or members of his campaign passed out free bottles of water at the Andover Fun Fest Parade. Each bottle of water had a label affixed to it with a picture of Mr. Schulte and the words: "Vote for Scott Schulte for Anoka County Commissioner."<sup>1</sup> The Complaint alleges the bottles of water were handed out during the parade while Mr. Schulte was "shaking hands with the crowd and otherwise promoting his candidacy for Anoka County Commissioner." The Complainant estimates that each bottle of water had a retail value of approximately \$1.00. The Complaint notes that on July 11, 2012, Mr. Schulte posted on his Facebook page that he was intending to hand out bottled water at the Andover parade.

The Complainant failed to identify the specific provision of the Fair Campaign Practices Act that she believes was violated by this alleged conduct, but it is assumed she is claiming Mr. Schulte violated Minn. Stat. § 211B.13.

Minnesota Statutes § 211B.13 provides as follows:

A person who willfully, directly or indirectly, advances, pays, gives, promises, or lends any money, food, liquor, clothing, entertainment, or other thing of monetary value, or who offers, promises, or endeavors to obtain any money, position, appointment, employment, or other valuable consideration, to or for a person, in order to induce a voter to refrain from voting, or to vote in a particular way, at an election, is guilty of a felony. This section does not prevent a candidate from stating publicly preference for or support of another candidate to be voted for at the same primary or election. Refreshments of food or nonalcoholic beverages having a value up to \$5 consumed on the premises at a private gathering or public meeting are not prohibited under this section.<sup>2</sup>

Minnesota Statutes § 211B.13 is an anti-bribery statute. It prohibits giving something of monetary value in order to induce a voter to vote in a particular way at an election. The issue presented in this case is whether giving free bottles of water to persons attending a parade amounts to a violation of this statute.

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<sup>1</sup> Complaint Ex. 1.

<sup>2</sup> The last sentence was amended in 2005 as follows:

Refreshments of food or nonalcoholic beverages ~~of nominal~~ having a value up to \$5 consumed on the premises at a private gathering or public meeting are not prohibited under this section.

Minn. Laws 2005, ch. 156, art. 6, sec. 63.

An assessment of the monetary worth of an item should be made from the perspective of a voter receiving the item, not the person offering it.<sup>3</sup> Whether the distribution of items to voters is a violation of this section is a question of fact.<sup>4</sup> In prior decisions, Administrative Law Judges have held that tossing penny candy at a parade, giving notepads imprinted with the candidate's name and office, and distributing bottles of water at a county fair with "Republican Party" labels did not violate Minn. Stat. § 211B.13,<sup>5</sup> but that a candidate's provision of chicken dinners to residents at a senior housing complex after a candidates' forum did violate Minn. Stat. § 211B.13.<sup>6</sup>

The Administrative Law Judge concludes that, like *Campbell v. Grant County Republican Party of Minnesota*,<sup>7</sup> the provision of bottled water in this case does not constitute "a thing of monetary value" or "other valuable consideration" within the meaning of the statute. The Complainant estimates that each bottle of water has a retail value of approximately \$1.00. The Complainant thereby admits that each bottle was worth less than \$5, which is the amount the Legislature established for determining whether a refreshment is a thing of monetary value.

In addition, Ms. Fitzgerald has failed to allege sufficient facts to support her claim that Mr. Schulte provided the bottles of water to induce a voter to refrain from voting or vote in a particular way at an election so as to fall within the prohibition of Minnesota Statutes § 211B.13. It appears that Ms. Fitzgerald merely argues that any donation of food or beverage from someone who is also a candidate for public office violates the statute. However, this argument overstates the nature of the prohibition in section 211B.13. If the Legislature had intended to prohibit *all* donations from candidates for public office, it would have stated this intent directly. Instead, section 211B.13 draws the prohibition more narrowly, banning only those gifts that are rendered with the purpose of inducing voters to either refrain from voting, or to vote in a particular way.

While the Complainant asserts that the label on the water bottles promoted Mr. Schulte's election, there is no allegation that any condition was attached to the offer of a bottle of water, that anyone was "paid" to vote for Mr. Schulte, or that anyone was otherwise "induced" to vote a particular way in the

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<sup>3</sup> *United States v. Garcia*, 719 F.2d 99, 102 (5<sup>th</sup> Cir. 1983) (under federal statute prohibiting payment for votes, an assessment of the monetary worth of an item should be made from the perspective of a voter receiving the item, not the person offering it).

<sup>4</sup> See Op. Atty. Gen. 627F-1, March 7, 1950 (interpreting predecessor statute) (whether the distribution of objects such as matchbooks, pencils, emery boards, etc., is a violation of this section is a question of fact).

<sup>5</sup> See *Kalil v. Knutson*, OAH Docket No. 3-6302-16119-CV (Order Denying Reconsideration, September 2, 2004); *Schauer v. Gillaspie*, OAH Docket No. 3-6371-17570-CV (Order of Dismissal dated October 11, 2006); *Campbell v. Grant County Republican Party*, OAH Docket 12-0320-19820-CV (Order of Dismissal, Aug. 4, 2008).

<sup>6</sup> *Wyckoff v. Peterson*, OAH Docket No. 7-6301-16405-CV (Findings of Fact, Conclusions, Order and Memorandum, April 25, 2005).

<sup>7</sup> OAH Docket 12-0320-19820-CV (Order of Dismissal, Aug. 4, 2008).

Anoka County Commissioner election. To the contrary, it appears that the bottles of water were simply handed out during a parade and spectators were free to accept or reject them, without any condition. As was noted in the *Campbell v. Grant County Republican Party* decision, the value of the water accepted by any person was too nominal to create any obligation on the part of the recipient to vote in any particular manner and there is no allegation or evidence showing that any water was accepted under those terms. The “inducement” prohibited by Section 211B.13 requires something more than what was alleged to have occurred during the Andover Fun Fest Parade. In this respect, this case is distinguishable from other cases alleging a violation of Section 211B.13 where the connections between the provision of food items and the candidates’ electioneering efforts were clear.<sup>8</sup>

In this case, the value of the bottled water is too nominal to create an inducement or obligation on the part of the recipient to vote for Mr. Schulte and Complainant has put forward no evidence that the bottles of water were accepted under those terms. Because the Complainant has failed to allege a *prima facie* violation of Minnesota Statutes § 211B.13, the Complaint is dismissed.

**B. L. N.**

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<sup>8</sup> Compare *Wyckoff v. Peterson*, OAH Docket No. 7-6301-16405-CV (2005) (the provision of 20 chicken dinners on the evening following a “meet the candidates” forum, and three days before the election, violated section 211B.13).